

**Indiana Department of State Revenue**  
**Revenue Ruling #2005-05ST**  
**April 26, 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

Sales and Use Tax- Application of Sales Tax to Foundations for Grave Markers

Authority: IC 6-2.5-4-9, 45 IAC 2.2-4-22 (d), (e).

The taxpayer requests that the department rule on how the sales tax applies to the installation of foundations for grave markers.

**STATEMENT OF FACTS**

The taxpayer is in the business of selling grave markers (tombstones). The taxpayer buys the stone and markets it along with the inscription to members of the general public and their families. The taxpayer treats the sale of such markers as tangible personal property and collects the appropriate sales tax.

Due to the substantial weight of the markers, a foundation must be installed prior to the placement of the markers. The foundation typically could be best described as a concrete slab that is installed in the ground upon which the marker is then placed. Sometimes the taxpayer will contract with a third party to install the foundation, pay such third party and pass along that charge to the purchaser of the marker. When the charge for the foundation is not contracted via a third party, the taxpayer themselves install the foundation and charge the buyer of the grave marker for the foundation along with the grave marker. The foundation, whether it is contracted through a third party or is installed by the taxpayer, is contracted for on a lump sum basis. In other words, it is for a flat charge in which materials and labor are included. The charge for the foundation is separately stated on the bill.

**DISCUSSION**

IC 6-2.5-4-9 provides as follows:

- (a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

- (1) is to be added to a structure or facility by the purchaser; and
- (2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

The Sales Tax Regulations clarify the liability of contractors for sales and use tax at 45 IAC 2.2-4-22 (d) and (e) as follows:

(d) Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

- (1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction materials and the cost for the labor and other charges (only the gross proceeds from the sale of the construction material are subject to tax); or
- (2) Construction material sold over-the-counter. Over the counter sales of construction materials will be treated as exempt from the state gross retail tax only if the contractor receives a valid exemption certificate issued by the person for whom the construction is being performed or by the customer who purchases over-the-counter, or a direct pay permit issued by the customer who purchases over-the-counter.

(e) Disposition subject to the use tax. With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner.

- ... (3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

The taxpayer's situation does not fit into any of the cited examples where the contractor would collect sales tax on the finished product. Rather, the taxpayer or third party contractor changes tangible personal property into an improvement that becomes part of the real estate. The taxpayer either installs the foundation for the monument or arranges for another contractor to install the foundation pursuant to a lump sum contract. This clearly falls within the category that is subject to the payment of use tax by the contractor or the taxpayer at time of sale to the purchaser of the installed monument if the sales tax

was not paid when the taxpayer or third party contractor purchased the tangible personal property that was converted into the real estate.

### **RULING**

The Department rules that the installation of the foundation for the grave markers pursuant to a lump sum contract is treated as an improvement to real estate. A contractor under a lump sum contract, is responsible for paying the sales tax at the time materials are purchased, or if not paid, use tax on the cost of the materials.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue.